

HOUSE BILL NO. 425

INTRODUCED BY J. SESSO, GALLUS, GILLAN, JOPEK, LAIBLE, SONJU

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ~~GENERALLY REVISING EXEMPTIONS FROM CERTAIN~~
5 ~~SUBDIVISION REVIEW REQUIREMENTS AND~~ REVISING REQUIRED CONTENTS OF SUBDIVISION
6 REGULATIONS; ~~REVISING THE KINDS OF DIVISIONS OF LAND, AGGREGATIONS OF LAND, AND~~
7 ~~BOUNDARY RELOCATIONS THAT ARE NOT SUBJECT TO REVIEW; CLARIFYING THE DIVISIONS THAT~~
8 ~~ARE SUBJECT TO CERTAIN SURVEY REQUIREMENTS AND ZONING REGULATIONS; ALLOWING A~~
9 ~~GOVERNING BODY TO EXAMINE DIVISIONS OF LAND TO VERIFY THAT AN EXEMPTION APPLIES;~~
10 ~~ALLOWING SUBDIVISION REGULATIONS TO RESTRICT FURTHER CONVEYANCE OF CERTAIN PARCELS~~
11 ~~THAT WERE CREATED UNDER EXEMPTION PROVISIONS; REQUIRING SUBDIVISION REGULATIONS TO~~
12 ~~REQUIRE A SUBDIVIDER TO MEET WITH AN AGENT OF THE GOVERNING BODY PRIOR TO SUBMITTAL~~
13 ~~OF A SUBDIVISION APPLICATION; AMENDING SECTIONS 15-16-102, 76-3-203, 76-3-301, SECTION~~
14 ~~76-3-504, MCA; 76-3-609, AND 76-4-125, MCA; AND REPEALING SECTIONS 76-3-201 AND 76-3-207, MCA;~~
15 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 (Refer to Third Reading Copy -- Blue Bill)

19 Strike everything after the enacting clause and insert:

20
21 **Section 1.** Section 76-3-504, MCA, is amended to read:

22 **"76-3-504. Subdivision regulations -- contents.** (1) The subdivision regulations adopted under this
23 chapter must, at a minimum:

24 (a) list the materials that must be included in a subdivision application in order for the application to be
25 determined to contain the required elements for the purposes of the review required in 76-3-604(1);

26 (b) except as provided in 76-3-210, 76-3-509, or 76-3-609, require the subdivider to submit to the
27 governing body an environmental assessment as prescribed in 76-3-603;

28 (c) establish procedures consistent with this chapter for the submission and review of subdivision
29 applications and amended applications;

30 (d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;



1 (e) provide for the identification of areas that, because of natural or human-caused hazards, are
2 unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be
3 eliminated or overcome by approved construction techniques;

4 (f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year
5 frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

6 (g) prescribe standards for:

7 (i) the design and arrangement of lots, streets, and roads;

8 (ii) grading and drainage;

9 (iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet
10 the:

11 (A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that
12 will create one or more parcels containing less than 20 acres; and

13 (B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels
14 containing 20 acres or more and less than 160 acres; and

15 (iv) the location and installation of public utilities;

16 (h) provide procedures for the administration of the park and open-space requirements of this chapter;

17 (i) provide for the review of subdivision applications by affected public utilities and those agencies of
18 local, state, and federal government identified during the preapplication consultation conducted pursuant to
19 subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review
20 may not delay the governing body's action on the application beyond the time limits specified in this chapter, and
21 the failure of any agency to complete a review of an application may not be a basis for rejection of the application
22 by the governing body.

23 (j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider
24 to:

25 (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be
26 subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have
27 a legal right to the water and reserve and sever any remaining surface water rights from the land;

28 (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to
29 provide the use of a water right on the subdivision lots, establish a landowner's water use agreement
30 administered through a single entity that specifies administration and the rights and responsibilities of landowners

1 within the subdivision who have a legal right and access to the water; or

2 (iii) reserve and sever all surface water rights from the land;

3 (k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in
4 the subdivision that:

5 (A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical
6 placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for
7 irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an
8 irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision
9 lots;

10 (B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance,
11 and inspection of the ditch; and

12 (C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch
13 easement without the written permission of the ditch owner.

14 (ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

15 (A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner
16 acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated
17 land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable;
18 or

19 (B) the water rights are removed or the process has been initiated to remove the water rights from the
20 subdivided land through an appropriate legal or administrative process and if the removal or intended removal
21 is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the
22 subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall
23 document that intent, when applicable, in agreements and legal documents for related sales transactions.

24 (l) require the subdivider, unless otherwise provided for under separate written agreement or filed
25 easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery
26 ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to
27 lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with
28 historic and legal rights;

29 (m) require the subdivider to describe, dimension, and show public utility easements in the subdivision
30 on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow

1 the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility
2 services within the subdivision.

3 (n) establish whether the governing body, its authorized agent or agency, or both will hold public
4 hearings;

5 (o) establish procedures describing how the governing body or its agent or agency will address
6 information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

7 (p) establish criteria that the governing body or reviewing authority will use to determine whether a
8 proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade
9 the requirements of this chapter. The regulations must provide for an appeals process to the governing body if
10 the reviewing authority is not the governing body.

11 (q) establish a preapplication process that:

12 (i) ~~allows~~ requires a subdivider to meet with the agent or agency, other than the governing body, that is
13 designated by the governing body to review subdivision applications prior to the subdivider submitting the
14 application;

15 (ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth
16 policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

17 (iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local,
18 state, and federal government, and any other entities that may be contacted for comment on the subdivision
19 application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during
20 the review of the application, the agent or agency designated by the governing body contacts a public utility,
21 agency, or other entity that was not included on the list originally made available to the subdivider, the agent or
22 agency shall notify the subdivider of the contact and the timeframe for response.

23 (iv) requires that a preapplication meeting take place no more than 30 days from the date that the agent
24 or agency receives a written request for a preapplication meeting from the subdivider; and

25 (v) establishes a time limit after a preapplication meeting by which an application must be submitted as
26 provided in 76-3-604.

27 (2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under
28 76-3-509 and this section may include provisions that are consistent with this section that promote cluster
29 development.

30 (3) The governing body may establish deadlines for submittal of subdivision applications."

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2 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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